IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

LR of Dharsi Dass.
vs.
LR of Smt. Dhapu.

S.B.CIVIL SECOND APPEAL NO.9/1987 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 22.7.1986 PASSED BY SHRI TEJPAL SIHAG, ADDITIONAL DISTRICT JUDGE, JAISALMER IN CIVIL APPEAL (DECREE) NO.6/1985.

DATE OF JUDGMENT ::: 4.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Jitendra Chopra, for the appellant.

Mr. RK Thanvi, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

This appeal is against the judgment and decree of the trial court dated 27.5.1982 passed in Civil Original No.41/1979 and dismissal of the appellant's appeal by the first appellate court vide judgment and decree dated 22.7.1986.

Brief facts of the case are that the plaintiffs Smt. Dhapu and Kishan Lal, who were real brother and sister, filed a suit for eviction of the defendant Dharsi Dass. The plaintiffs alleged that the plaintiff no.1 was widow and plaintiff no.2 was looking after the interest of the plaintiff no.1. The suit property consisting of one “Moda” and a “Kothadi” under the stairs were let out to the defendant in the year 1960 on a rent of Rs.5/- per month. According to the plaintiffs, the plaintiff no.2 was receiving rent of the suit premises. In the year 1968, at the time of marriage of the defendant's son Mohan, one “Patiyal” and “chowk” were also taken by the defendant but when these accommodations were not handed over to the plaintiffs, then it was agreed that the defendant shall pay total Rs.15/- per month as rent for all above mentioned accommodation. According to the plaintiffs, the defendant paid the rent upto the month of April, 1973 and thereafter, did not pay the rent. The plaintiffs pleaded that the defendant has already purchased a residential house for himself and thereafter, he has denied the title of the plaintiffs and also renounced the character as of tenant. The plaintiffs also pleaded that the suit house is required for personal bonafide necessity of the plaintiffs.

The defendants submitted written statement and in para no.1 categorically stated that the fact mentioned in para no.1, which are in relation to claim of the plaintiffs for the house in dispute are denied. In addition to the above,

the defendant submitted that the plaintiffs never had any possession over the house. Thereafter, the defendant pleaded specifically that the defendant no.2 is not the landlord nor he falls in the definition of the landlord. Thereafter, the defendant submitted that “Moda” and “Kothadi” below the staircase were never in possession of the plaintiff no.1 and the defendant never took it on rent from the plaintiffs. He also denied the rent. The defendant further pleaded that even on rest of portion of the house also, there is no possession of the plaintiffs. Despite all above facts in sub-para (1) of para no.3 of the written statement, the defendant submitted that he never denied the title of the plaintiffs and he accepted the title of the plaintiffs for the accommodations which were taken on rent from the plaintiffs. After admitting the title of the plaintiffs and relationship of landlord and tenant, in para no.9 of the written statement, the defendant pleaded that originally the house was belonging to the plaintiff no.1's husband Kastoor Chand and Laxmi Chand s/o Thakur Das. After the death of Kastoor Chand, Laxmi Chand became owner of the house.

According to learned counsel for the appellant, Laxmi Chand was son of Thakur Das, therefore, at this place also, the defendant clearly pleaded that the house was of the plaintiff's husband Kastoor Chand and Laxmi Chand, and Laxmi Chand became owner by survivor. After this in the same para, the defendant submitted that “Patiyal”, “Kotah”, “Bhuna” and “Chowk” were taken on rent through Kishan Lal

from plaintiff no.1 Dhapu and Laxmi Chand. AT this place also, the defendant tried to admit the plaintiff no.1/ landlord by taking a plea that the rent was given for maintenance of Dhapu. The defendant denied the personal bonafide necessity of the plaintiff.

The trial court as well as the first appellate court concurrently held that it is clear case of denial of title of the plaintiffs by the defendant as well as renouncing the character by tenant. Two courts below also held that even from the evidence of the defendant himself, it is proved that the plaintiff no.1 has only one house and that is the house in dispute. Both the courts below considered the issue of comparative hardship and gave reason for holding that in case, the suit will not be decreed, it will cause hardship to the plaintiffs. The defendant being aggrieved against the concurrent findings of fact recorded by this court preferred this second appeal.

This second appeal was admitted by this Court on 20.1.1987 on finding that the following substantial questions of law arise in this case :-

> “(1) Whether the court was justified in passing the decree on the ground of denying the title of the plaintiff ?
>
> (2) Whether the court was justified in passing the decree without going into the question of comparative hardship ?”

Though the appeal was admitted but after going through the written statement itself, this Court is of the view that the two courts below rightly decreed the suit of the plaintiffs on the ground of denial of title of the plaintiffs by the defendant. The defendant in the same written statement unequivocally denied the title of the plaintiffs as well as possession over the house and thereafter, denied payment of rent and questioned the right of the plaintiff to recover the rent. Not only this, the defendant after denying the title of the plaintiffs and the character of the tenant again admitted in the same written statement that the plaintiffs are landlords of the portion which was let out by them to the defendant and thereafter again, the defendant in his written statement stated that the accommodation which was alleged to have been let out to the defendant are not belonging even to the plaintiff no.1. Therefore, in view of the facts mentioned in the written statement itself as well as from the admissions of the defendant in his statement, it is clear that he denied the title of the plaintiff no.1 and character of tenant as well as his relation with the landlord. The substantial question of law no.1 is, therefore, decided against the appellant.

The substantial question of law no.2 appears to have been framed under the impression that the courts below granted the decree for eviction of tenant on the ground of personal bonafide necessity of the plaintiffs without considering the question of comparative hardship whereas the issue no.12 is very much there and both the courts

below considered this aspect of the matter that what will be the consequences if the decree for eviction is not passed in favour of the plaintiffs. Both the courts below held that the house in question is the only house of the plaintiff no.1 and she wants to live in that house. The house in question is the only house of the plaintiff is also admitted by the defendant in his defence. Therefore, the substantial question of law no.2 is also decided against the appellant.

In view of the above discussion, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya